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C O N F I D E N T I A L SECTION 01 OF 04 BANGKOK 004641

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SUBJECT: DAS MARCIEL URGES RAPID RESTORATION OF DEMOCRATIC
RULE

Classified By: Ambassador Ralph L. Boyce, reason 1.4 (b) and (d).

¶1. (C) SUMMARY: EAP/DAS Scot Marciel met with MFA, MOD, and Justice Ministry permanent secretaries on August 22-23 to urge Thailand's return to democratically-elected government. DAS Marciel also expressed concern about continuing violence in the troubled South, human rights issues, and the treatment of Hmong refugees. This visit came at a particularly useful juncture to underscore the importance of free and fair elections this year and to urge that martial law be lifted in the remaining areas where it is still in effect. The Thai for their part highlighted the threat that vote-buying presented to the fairness of the upcoming election. They denied that martial law had any effect on the voters and pointed out that the largest turnout against the constitution was in the martial law areas. Interlocutors admitted that there were shortcomings in the new constitution, but noted its positive elements, such as strong protection for press freedom and a sincere effort to build independent institutions to monitor politicians and fight corruption. On refugees, the MFA again pledged that the highly sensitive group of about 150 Hmong in detention in Nong Khai would not be repatriated, but cautioned that the Thai could not resolve these cases quickly, as the Lao threatened to cease all cooperation on the repatriation of 8000 Hmong illegal migrants/refugees in Petchaboon if the Nong Khai group were allowed to go to a third country. DAS Marciel was accompanied by Ambassador at MFA and MOD meetings. End summary.

ELECTIONS/MARTIAL LAW

¶2. (C) DAS Marciel emphasized in all his meetings that the US placed the highest importance on the return of democratic, civilian government, and looked forward to free and fair elections by December. MFA Permsec Virasakdi Futrukul expressed optimism that it would be "smooth sailing" to the elections, and said that December 23 was the most likely date. He noted that political parties were once again active, and the political situation was "getting back to normal." MOD Permsec GEN Winai Phattiyakul (also SecGen of the Council for National Security-CNS) agreed that the elections would take place before the end of the year, although he added, "absent a very unexpected incident."

¶3. (C) On the pre-election atmosphere, the Thai side repeatedly raised the problem of vote-buying (by former PM

Thaksin and his supporters) as a threat to a genuinely fair election. For his part, DAS Marciel raised concerns about martial law impeding the ability of citizens to express their views, and strongly urged that it be lifted in the remaining areas where it is still in effect. GEN Winai noted that martial law had been in effect along Thailand's borders even before the coup, part of security measures to defend against drug trafficking. The Ambassador countered that martial law was in effect over a far greater area than in the pre-coup period (note: affecting close to half the population. end note.) MFA Permsec Virasakdi pointed to the referendum results to support his argument that martial law had not affected the voting -- martial law was in effect in many provinces that had voted against the constitution. "So why keep it?" the Ambassador asked. Both permsecs said that they would bring our concerns to the government/CNS and try to have martial lifted in the non-border areas.

14. (C) GEN Winai gave a quick overview of the political landscape leading up to the elections. The former ruling Thai Rak Thai (TRT) had split into three factions. Two of these factions were willing to cooperate with other parties, such as the Democrats and Chart Thai, to "let democracy return to normal." However, the remaining faction remained extremely loyal to former PM Thaksin. If this faction won the most seats in the general election, it could lead to political deadlock, Winai feared.

CONSTITUTION/HUMAN RIGHTS

15. (C) Marciel raised concerns about the reported weaknesses in the constitution. He asked Justice Permsec Jaran Pukditanakul, a member of the constitution drafting

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committee, about reports that the constitution weakens political parties and strengthens the role of judges. Jaran responded that the drafters were trying to establish genuinely independent and impartial institutions. The constitution relies on judges so much because, "we have nowhere else to go." The Privy Council cannot be involved in selecting officials for the independent commissions (the Election Commission, the Counter-corruption Commission, etc.) because the Privy Council must remain above politics. The judiciary is one of the few institutions that is separate from politics and political parties; "we must bring them in, not as a player, but as a regulator." Asked about the appointment of half the senators, Jaran admitted this was a compromise. Before 1997, all senators were appointed by the Prime Minister. The elected Senate was introduced in the 1997 Constitution for the first time, and "it didn't work." Instead of impartial people with brains and relevant experience, they just got more politicians, as the political parties were the ones with an election infrastructure. The Senate couldn't provide proper oversight of the lower House, it became partisan, and ultimately the power review structures collapsed.

16. (C) MFA permsec Virasakdi also agreed that the constitution "was not perfect." However, he took issue with the characterization that it had been imposed by the military. He insisted that the constitution drafters, although appointed by the military, had acted independently. He drew a parallel with the members of the National Legislative Assembly (NLA). He said, "I am on the NLA, and no one instructs me how to vote." In fact, the government had to withdraw some proposed legislation because the NLA would not approve it. The constitution drafters had similar independence. Virasakdi himself expressed deep concerns over the requirement that treaties would have to be approved by the Parliament. He said MFA had warned the other ASEAN members that the PM might not be able to sign the ASEAN charter in November due to this requirement. "We'll amend what does not work," he concluded.

17. (C) Justice Permsec Jaran, like virtually all interlocutors, raised concerns about vote-buying; he asked how the US was able to avoid this problem. DAS Marciel pointed out the important role the press played in the US in uncovering election abuses. Jaran agreed that a more active and independent press would help Thailand root out this problem here, too. He explained that the new constitution increases the guarantees of press freedom by prohibiting any holder of a political office from owning any media organization, and by stating that it is an abuse of power for any office holder to intervene in the presentation of news or opinions by media. (Note: Sections 46 and 48 of the new constitution add these provisions, which were not in the 1997 charter. End note.)

18. (C) In discussions at the Justice Ministry, Marciel raised two outstanding human rights cases of particular concern. One was the disappearance of Muslim lawyer Somchai Neelaphaichit. (Somchai was abducted by several police officers in 2004, in apparent retaliation for defending Muslim prisoners bringing accusations of torture against police. The Justice Ministry continues to pursue the investigation though its Department of Special Investigations.) Jaran agreed that it was very important to solve the case, and said that the Ministry had recently gotten important new information. Jaran was also involved in the new commission set up to investigate the extra-judicial killings committed during Thaksin's "War on Drugs" in 2003. Marciel said that it was important for Thailand's democracy for people to know that there is justice when there are abuses of power. Jaran agreed, but complained that the government had been too slow to make serious efforts to investigate the cases, and noted that there was not much public support for the investigation. "The people seem to forget," he said, but added that international concern remained high, and was useful.

TROUBLED SOUTH

19. (C) (C) Gen. Winai told DAS Marciel that conditions in southern Thailand have greatly improved over last year,

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security forces have been able to identify instigators, arrest and bring to justice suspects, and are receiving better cooperation from locals. Also, RTG coordination with the Malaysian government has produced results through improved living conditions and hindering recruitment efforts by insurgents. Winai commented that the Malaysian government understands possible spillover into Malaysia from southern Thailand and is cooperating with RTG efforts. Winai said Thailand's Defense Council is concerned over the increase in the number of Thais wearing Muslim headscarves. Winai said Malaysia has been able to control this practice but in Thailand, where twenty years ago few Muslims wore headscarves, more conservative Islamic practices have become widespread.

110. (C) Justice Permsec Jaran underscored that the government had to be careful not to take action against innocent civilians. The government had to rely on the people for information about insurgent activities, and so had to avoid alienating the innocent. He also recognized that abuses by officials still occurred, although he added that this was not the intention or strategy of the government. Jaran hoped that the security forces could improve their use of forensic science; if they could only demonstrate to the people that they were arresting those genuinely involved in terrorist acts, then the local people would accept the arrests, he believed.

111. (C) Gen. Winai stated that there is no evidence of international actors operating in the South or assisting the insurgency. This is because the insurgency arose not as a religious conflict. Rather social, ethnic, and economic

factors were the foundation of the insurgency. As proof that global actors have not influenced the conflict, Winai said that the RTG had found evidence that southern Thai insurgents had rejected an offer of assistance from members of the Free Aceh Movement (GAM) after the 2005 peace agreement between GAM and the Indonesian government.

REFUGEES

¶12. (C) DAS Marciel noted US concerns over the Hmong refugees in Petchaboon and Nong Khai, particularly highlighting concerns over the extremely poor conditions for some 150 Hmong in the Nong Khai detention facility. MFA Permsec Virasakdi said that all the Hmong would be screened by the Thai government, which would determine which were economic migrants and which would be in danger if they were returned. On the Nong Khai group (most of whom have third countries prepared to accept them), Virasakdi complained that the Lao tied those cases to the larger group in Petchaboon, threatening to withhold cooperation on the repatriation of any of those 8000 Hmong if the Nong Khai group is allowed to resettle elsewhere. Virasakdi assured Marciel that, given time, the Thai would be able to reason with the Lao. Virasakdi said that the Lao particularly rejected any role for UNHCR; they complain that UNHCR's granting "person of concern" status to Hmong from Laos implies that there is a security situation in Laos that might justify international intervention.

¶13. (C) Marciel warned that there would be an uproar if the Hmong were repatriated without any cooperation with or role for UNHCR. Virasakdi responded somewhat sharply, pointing out that UNHCR plays no role in refugee screening in the US. Australia pushed back Asian boat people, and Spain pushed back Africans. The international community should apply the same standards to Thailand that it does to everyone else. On the Nong Khai group, he had heard that the US was considering some assistance to alleviate the difficult conditions at the Nong Khai detention facility, and he welcomed this. He pointed out that immigration officials in Nong Khai had been punished when several of the detainees had escaped earlier this year; the new officials at the facility were keeping the group in close confinement because they feared they would be punished if the same thing happened again. He reiterated that the RTG would not send them back, but it would be a while before their situation was resolved. In the longer term, Virasakdi hoped for some measures to stem the endless flow of Hmong from Laos, and (half-jokingly) suggested that Congress simply establish a program to resettle all the

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remaining Hmong still in Laos to the US.

COMMENT

14 (C) It was especially helpful at this time to have a US visitor underscore the need for fair elections soon and to reiterate our concerns over martial law. We do not expect, unfortunately to see any significant change on martial law soon, as there is little pressure internally, or even from any country besides the US, on this point. END COMMENT

¶15. (U) DAS Marciel cleared this cable.
BOYCE